REMARKS

Claims 1-15 are pending in this application. The Office Action restricts claims 1-5, 6-10 and 11-15 under PCT Rule 13.1. By this Amendment, claims 1-15 are amended to more clearly recite open-ended features of the claimed subject matter and to improve form. Moreover, claims 6-10 are amended to clarify that they are directed to a method of manufacture. Furthermore, claim 11 is amended to clarify that it is directed to a method of protecting against cerebral dysfunction. Support for the amendments to the claims may be found, for example, in the claims as originally filed and in the specification at paragraph [0018]. No new matter is added.

In view of the foregoing amendments and following remarks, reconsideration and allowance are respectfully requested.

I. Response to Restriction Requirement

Applicants provisionally elect Group III, claims 6-10 and 11-15, with traverse.

National stage applications filed under 35 U.S.C. §371 are subject to unity of invention practice as set forth in PCT Rule 13, and are not subject to U.S. restriction practice. *See* MPEP §1893.03(d). PCT Rule 13.1 provides that an "international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept." PCT Rule 13.2 states:

> Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

A lack of unity of invention may be apparent "*a priori*," that is, before considering the claims in relation to any prior art, or may only become apparent "*a posteriori*," that is, after

taking the prior art into consideration. *See* MPEP §1850(II), quoting *International Search and Preliminary Examination Guidelines* ("ISPE") 10.03. Lack of *a priori* unity of invention only exists if there is no subject matter common to all claims. *Id.* If *a priori* unity of invention exists between the claims, or, in other words, if there is subject matter common to all the claims, a lack of unity of invention may only be established *a posteriori* by showing that the common subject matter does not define a contribution over the prior art. *Id.*

Furthermore, unity of invention only needs to be determined in the first place between independent claims, and not the dependent claims, as stated in ISPE 10.06:

> Unity of invention has to be considered in the first place only in relation to the independent claims in an international application and not the dependent claims. By "dependent" claim is meant a claim which contains all the features of one or more other claims and contains a reference, preferably at the beginning, to the other claim or claims and then states the additional features claimed (Rule 6.4).

See also MPEP §1850(II). ISPE 10.07 further provides:

> If the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect of any claims that depend on the independent claims. In particular, it does not matter if a dependent claim itself contains a further invention.

See also MPEP §1850(II).

In the Office Action, it is mistakenly asserted that unity of invention does not exist because features are not shared between the identified Groups of claims. *See* p. 3. The analysis in the Office Action has it backwards. It is not whether all features are shared between the independent claims, but whether at least one special technical feature is common to all of the independent claims, and, hence, common to all of the claims, whether independent or dependent. Because a lack of *a priori* unity of invention is only properly found when there is no subject matter common to all claims, the recitations of the active ingredient "3-methyl-1-phenyl-2-pyrazolin-5-one . . . or a medically acceptable salt thereof"

and "a base" common to independent claims 1, 6 and 11 establishes *a priori* unity of invention. *See* MPEP §1850(II).

Accordingly, all the claims share common subject matter and, therefore, *a priori* unity of invention exists between all the claims. Thus, for the present application, a lack of unity of invention may only be determined *a posteriori*, or in other words, after a search of the prior art has been conducted and it is established that all the elements of the independent claim are known. *See* ISPE 10.07 and 10.08.

The Office Action does not establish that each and every element of the subject matter that is common to independent claims 1, 6 and 11 is known in the prior art. Therefore, Applicants respectfully submit that lack of unity of invention has not been established, and thus a restriction requirement based on a lack of unity of invention is improper.

Thus, reconsideration and withdrawal of the Restriction Requirement are respectfully requested.

II. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claim 1-15 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,

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